IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2375 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE R.K.ABICHANDANI
and
HON'BLE MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KRISHNASWAMI AIYASWAMI S/O. HARIHARAN KRISHNASWAMI
Versus
DY.DIRECTOR GENERAL (STAFF)

Appearance:
1. Special Civil Application No. 2375 of 2004
PARTY-IN-PERSON for Petitioner No. 1
MR MS RAO for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE R.K.ABICHANDANI
and
HON'BLE MR.JUSTICE D.H.WAGHELA

Date of decision: 16/09/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE R.K.ABICHANDANI)

#. During the course of the arguments, it was pointed out by the party-in-person that, by notification dated 28.4.1984 at Annexure "C" to the petition, the petitioner and two other officers Mr. M.S. Rana and Mr. H.B. Vadhwa were given the date of regular promotion from 20.2.1984. According to the petitioner, Mr. M.S.Rana and Mr. H.B. Vadhwa were also in the same pay-scale of Rs.1100-1600 like the petitioner before their promotion. It was also pointed out that a clarification was issued by the Government of India on 30th September, 1982, a copy of which is on record, as per which it was clarified on point no. 2, as to whether Office Memorandum dated 5.10.1981 was applicable in case of an officer of an organized Grade-A service appointed from the post in the scale of Rs. 1100-1600 to the post in the scale of Rs. 1800-2000, that benefit of fixation of pay under the memorandum dated 5.10.1981 was admissible in such cases also. It is stated in paragraph-4 of the petition that Mr. M.S. Rana and Mr. H.B. Vadhwa were granted the regular scale of Rs.1800-100-2000 by the Accounts Officer of the Surat Telecom District and the Office of the Director of Telecom, Ahmedabad; but the petitioner, who was similarly situated, was discriminated against and was denied the regular scale of Rs. 1800-100-2000 and was continued in the scale of Rs. 1500-60-1800-100-2000. According to him, if he were given the pay-scale of Rs. 1800-100-2000, as was done in the case of the other two similarly situated officers, his pay-scale would have been revised to Rs.4100-125-4850-150-5300 under the C.C.S.(Revised Pay) Rules, 1986. It appears that the concerned authority has not considered this aspect of the matter. The learned counsel for the respondents submitted that the concerned authority of the respondents will consider whether the petitioner's case was similar to those of the other two officers - Mr. M.S. Rana and Mr. H.B. Vadhwa, whether they have been given the pay-scale of Rs. 1800-100-2000 and whether the petitioner is entitled to such pay scale of Rs. 1800-2000 on the basis of the Office Memorandum dated 30th September, 1982, if such direction is given by the Court. Admittedly, the aforesaid aspect has not been considered by the concerned authority. The petitioner, party-in-person states that if his case is considered, he would be satisfied, if on consideration of his case an order is made expeditiously, having regard to his advanced age. The claim of the petitioner to the pay-scale of Rs. 4500-150-5700 with effect from 1.1.1986 may also be considered on the basis of the post actually held by the petitioner at the relevant time as per Rule 5 of the C.C.S. (Revised Pay) Rules, 1986, as submitted by the petitioner.

#. We therefore direct the respondents that the concerned authority of the respondents should consider the case of the petitioner afresh to find out whether he was similarly situated as the other two officers Mr. M.S.Rana and Mr. H.B. Vadhwa, whose dates of promotions were regularised with effect from 20.2.1984 under the same order dated 28.4.84 under which the petitioner's date of promotion was also regularised and to decide whether the petitioner was entitled to be fixed in the pay-scale of Rs. 1800-2000 on the basis of the office memorandum dated 30th September, 1982 and/or on the basis that the other two officers Mr. M.S. Rana and Mr. H.B. Vadhwa were placed in the pay-scale of Rs. 1800-100-2000, if they were so placed. It will also be considered afresh whether the petitioner was entitled to the pay-scale of Rs. 4500-150-5700 on the ground that at the time of his retirement he was holding a post carrying that scale. The concerned authority shall take its decision on fresh consideration of the matter and in accordance with law within two months as stated by the learned counsel for the respondents-authorities. In view of the above directions, the party-in-person states that he does not press for this petition. Subject to the above direction, the petition is disposed of as not pressed with no order as to costs.

[R.K. ABICHANDANI, J.]

[D.H. WAGHELA, J.]
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